

LEGAL REPRESENTATIVES OF WARREN MITCHELL.

MARCH 2, 1904.—Ordered to be printed.

Mr. WARREN, from the Committee on Claims, submitted the following

REPORT.

[To accompany H. R. 1700.]

The Committee on Claims, to whom was referred the bill (H. R. 1700) for the relief of the legal representatives of Warren Mitchell, deceased, having carefully considered the same, hereby report it back to the Senate and recommend its passage without amendment.

The facts as set forth in House Report No. 21, Fifty-eighth Congress, second session, sustain your committee in its favorable action.

The report of the House is adopted by your committee and made a part of their report, as follows:

[House Report No. 21, Fifty-eighth Congress, second session.]

The Committee on War Claims, to whom was referred House bill 1700, respectfully submit the following report:

At the breaking out of the war of the rebellion Warren Mitchell resided at Louisville, Ky. He was a merchant with extensive interests and connections, and had large amounts owing him in various sections of the South. General Anderson, commanding the Department of Kentucky, gave him a pass to enter the Confederate lines, and he went South "solely for the purpose of saving himself from financial ruin, leaving his wife at Louisville," and engaged in the proper and legitimate occupation of collecting, in the most available commodities, the amounts due him.

His base of operations was Memphis and Nashville, Tenn., and by December, 1864, he had gathered together 724 bales of cotton and had the same stored at Savannah, Ga., where it was seized by General Sherman, sold, and the proceeds, amounting to \$128,692.22, turned into the Treasury.

Mr. Mitchell's character for loyalty, truthfulness, integrity, and honor is amply sustained by such men as Virgil McKnight, ex-Senator John W. Stevenson, Hon. Benjamin H. Bristow, and Maj. Gen. L. H. Rosseau, nor is it to be presumed that General Anderson would have issued a pass to a Confederate sympathizer.

Mr. Mitchell promptly brought his suit in the Court of Claims under the "abandoned and captured property act," and the court being equally divided upon his right to recover his petition was dismissed. On appeal to the Supreme Court of the United States the sole issue was, not his loyalty, nor the amount of his loss, but the question of his domicile. Attorney-General Williams thus stated the proposition:

"If Mitchell acquired a domicile within the Confederate lines his business there was legitimate, and he is entitled to recover; if not, his business there was illegitimate, and he is not entitled to recover."

The Supreme Court stated the question thus:

"Hence this case turns upon the point whether the appellant was domiciled in the Confederate States when he bought the cotton in question." (21 Wall., 353.)

As a matter of fact, Mitchell resided for over three years in Tennessee in the laudable endeavor to protect his property, and he exercised many of the rights of citizenship, and it may well be questioned whether, if the case had been differently presented, the decision would not have been different.

In commenting on this feature of the case it is plain that the Supreme Court, in view of the petitioner's equities, must have felt a strong desire to be freed from the harsh rule of law under which they felt constrained to act, when they frankly tell us, at the end of their opinion, that "obviously important further facts bearing on the question might have been put in evidence by either party. We regret that this was not done. As the case is presented, our conclusion must necessarily be against the appellant."

The court held, however, that it appeared from the record Mitchell was a citizen of the State of Kentucky at the time of the seizure, and that therefore and for no other reason his business was illegitimate and he acquired no title to the property taken in payment of debts due him, because Kentucky was a loyal State, and the nonintercourse laws prohibited traffic between its citizens and citizens of States in rebellion.

In his brief before the Supreme Court John M. Harlan, now one of its justices, made the following unquestioned but startling proposition, when considered in the light of the court's decision:

"Had Mitchell, upon his entering the Confederate lines in July, 1861, joined the rebel army and become the owner of this identical cotton while he was endeavoring to overturn the Government of the Union, it could scarcely be doubted that under the present course of decisions his right to recover the proceeds of the cotton could not be questioned."

The decision of the court, therefore, was to the effect that if Mr. Mitchell had denied his allegiance to the United States and had become a citizen of Tennessee, instead of remaining loyal to the Union and to the State of his birth, he could have recovered in his suit, because he would not have been amenable to the nonintercourse laws, and his disloyalty would have been condoned by the President's amnesty proclamations. (U. S. v. Klein, 13 Wall., 128.)

The Supreme Court of the United States has repeatedly held that the proceeds of the abandoned and captured property now in the Treasury are merely "trust funds" (U. S. v. Padelford, 9 Wall., 543), and millions of dollars have been distributed to the legal owners upon that theory, and since the decision in the Klein case, above, it has not been questioned that the amnesty proclamations restored all property rights, even to disloyal persons. If, as said by Mr. Harlan, this decedent claimant had been an active rebel in the field, he could still have recovered under the Klein decision. In this case the return of these "trust funds" by the trustee, who holds and claims nothing but the naked legal title, is not prevented by disloyalty or fraud, but by the mere accident of domicile.

Your committee does not doubt or criticise the decision of the Supreme Court, harsh and technical as it is, but the question now presented is, Shall this Government, by the mere exercise of an arbitrary power, longer keep from this claimant the proceeds of property which, in every sense except the technical one that the courts of law can not recognize his right to sue for it, is rightfully his; property to which the Government can make and does make no lawful claim; not confiscated or confiscable; not in its possession or control under any law except one that has been declared by its courts to make it a trustee of such property? The claimant appeals to the sovereign, whose citizen he is, for that justice which is his due.

Here no technical construction of law can be held to overthrow the real merits or equities of a case. To do absolute justice is the highest duty, as well as the undisputed power, of Congress. It is hard to conceive upon what moral principle this money can be longer kept in the Treasury of the United States or the hand of arbitrary power be placed so heavily on the children of this man, who passed his old age and died in poverty merely because of the accident of his residence in the loyal State of Kentucky instead of the disloyal one of Tennessee.

Your committee report back the bill and recommend its passage.

In *Cutner v. United States* (84 U. S., 517-520) the material facts were identical with those in this case. The Supreme Court held that:

The sale being illegal the suit can not be sustained for the benefit of the vendors. It can not be sustained for Cutner's own benefit, because he received the full consideration of the cotton and has no interest remaining.

The Supreme Court has also held, in numerous cases, that the proceeds of abandoned and captured property in the Treasury constitute a trust fund, and that the title to the property was not divested from the original owners, by operation of that act. (*U. S. v. Klein*, 13 Wall., 128; *U. S. v. Padelford*, 9 Wall., 531; *Wylie v. U. S.*, 6 Ct. Cls., 295.)

The application of these rules to this case estops Mitchell's venders from maintaining an action for the value of the property, for the reason that they had received full consideration from Mitchell; they also prevent Mitchell from recovering, and thereby present practically the anomalous proposition that a trustee can, by his own acts, convert a trust estate into a fee, or in other words, that he can destroy the rights of a cestui qui trust by confiscation of the trust fund.

